

1 Kit M. Stetina (SBN 82,977)
2 Stephen Z. Vegh (SBN 174,713)
3 STETINA BRUNDA GARRED & BRUCKER
4 75 Enterprise, Suite 250
5 Aliso Viejo, CA 92656
6 Email: litigate@stetinalaw.com
7 Tel: (949) 855-1246
8 Fax: (949) 855-6371

9
10 Attorneys for Plaintiff
11 TOESOX, INC.

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 TOESOX, INC., a California corporation,

16 Plaintiff

17 vs.

18 PROSOURCE DISCOUNTS INC., a
19 California Corporation; and DOES 1-10,
20 inclusive,

21 Defendants

Case No. '14CV0874 AJB BLM

**COMPLAINT FOR PATENT
INFRINGEMENT OF U.S.
PATENT NO. 7,346,935**

DEMAND FOR JURY TRIAL

22 The Prosource Discounts Inc. manufactures, sells, offers for sales, imports and
23 uses a five-toed sock under the brand "Prosource" (hereinafter "the Prosource sock").
24 The Prosource sock infringes one or more claims of U.S. Patent No. 7,346,935, the
25 current assignee of which is Plaintiff TOESOX, INC. Accordingly, Plaintiff alleges
26 and complains of Defendant Prosource Discounts Inc. as follows:

27 **PARTIES**

28 1. Plaintiff TOESOX, INC is a corporation organized and existing under

1 the laws of the State of California and has a principal place of business in Carlsbad
2 California.

3 2. Defendant Prosource Discounts Inc. is a corporation organized and
4 existing under the laws of the State of California and has a principal place of business
5 at 8943 Oso Ave #C. Prosource Discounts Inc. has several retail stores to promote
6 and sell its products throughout the United States, including an online store located at
7 WWW.PROSOURCEBANDS.COM.

8 JURISDICTION AND VENUE

9 3. This Court has personal jurisdiction over Defendant Prosource Discounts
10 Inc. under Fed. R. Civ. P. 4(k)(1)(A) and California's long-arm statute, Cal. Civ.
11 Proc. Code § 410.10, as Defendant has continuous business contacts with the State of
12 California, has a business presence in the state of California and has committed the
13 complained-of acts in California, thereby causing damage to Plaintiff in this judicial
14 district.

15 4. This Court has subject matter jurisdiction pursuant to the patent laws of
16 the United States, 35 U.S.C. §§ 1 et seq., and pursuant to 28 U.S.C. § 1331 and 28
17 U.S.C. §1338(a).

18 5. Venue is proper in this district under 28 U.S.C. § 1400 because
19 Prosource Discounts Inc. has committed acts of infringement and has a regular and
20 established place of business in this district.

21 BACKGROUND FACTS

22 6. On March 25, 2008, United States Patent No. 7,346,935 entitled
23 "Stretchable High Friction Socks" ("the '935 patent") was duly and legally issued to
24 Joe Patterson. A true copy of the '935 patent is attached hereto as Exhibit A.

25 7. TOESOX is the record owner by assignment of the '935 patent with full
26 and exclusive right to bring suit to enforce this patent.

27 8. The '935 patent relates generally to foot apparel, including a woven sock
28 having a multitude of high friction buttons arrayed around the bottom thereof.

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

9. Plaintiff purchased from Prosource Discounts Inc. online retail store located at WWW.PROSOURCEBANDS.COM the Prosource yoga sock. The sock is sold under the registered brand named Prosource.

10. The prosource registered brand name is owned by Prosource Discounts Inc..

11. Prosource Discounts Inc. has been and are infringing, contributing to infringement, and/or inducing others to infringe the '935 patent by making, using, offering for sale, selling and/or importing the Prosource yoga sock. Defendant's acts of infringement have occurred within this district and elsewhere throughout the United States.

12. Prosource Discounts Inc. has willfully infringed the '935 patent by continuing its acts of infringement after being on notice of these patents.

COUNT 1

PATENT INFRINGEMENT

13. TOESOX hereby realleges and incorporates by this reference paragraphs 1 through 12 above as though fully set forth herein.

14. In violation of 35 U.S.C. § 271, Prosource Discounts Inc. has infringed and is continuing to infringe, literally and/or under the doctrine of equivalents, the '935 patent by practicing one or more claims of the '935 patent in its manufacture, use, offering for sale, sale and importation of the Prosource yoga sock.

15. TOESOX has been damaged by Prosource Discounts Inc.'s infringement and, unless Prosource Discounts Inc. is enjoined Prosource Discounts Inc. will continue their infringing activity and TOESOX will continue to be damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff TOESOX prays for the following relief against Prosource Discounts Inc.:

A. a preliminary and permanent injunction against Prosource Discounts Inc., its officers, agents, servants, employees, attorneys, all parent and subsidiary

1 corporations, all assignees and successors in interest, and those persons in active
2 concert or participation with Prosource Discounts Inc., enjoining it from continuing
3 acts of infringement of the '935 Patent;

4 B. an award of damages under 35 U.S.C. § 284 for Prosource Discounts
5 Inc.'s infringement of the '935 Patent, together with pre-judgment and post-judgment
6 interest;

7 C. a trebling of said damages pursuant to 35 U.S.C. § 284;

8 D. an award of attorney's fees pursuant to 35 U.S.C. § 285; and

9 E. any such other relief that this Court deems just and proper.

10 Dated: April 14, 2014

STETINA BRUNDA GARRED & BRUCKER

11 By: s/Kit M. Stetina

12 Kit M. Stetina

13 Attorneys for Plaintiff

14 TOESOX, INC.

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

DEMAND FOR JURY TRIAL

Plaintiff, Toesox, Inc. hereby demands a jury trial in this action.

Dated: April 14, 2014

STETINA BRUNDA GARRED & BRUCKER

By: s/Kit M. Stetina

Kit M. Stetina

Attorneys for Plaintiff

TOESOX, INC.

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371